

SENATE BILL No. 57

DIGEST OF INTRODUCED BILL

Citations Affected: IC 30-5-6.

Synopsis: Accounts under a power of attorney. Provides that an attorney in fact is entitled to judicial review and settlement of an account. Provides that absent fraud, misrepresentation, inadequate disclosure, or failure to provide proper notice, an attorney in fact is discharged from all liability as to the transactions in the accounting if proper notice is provided of the court's approval of the accounting.

Effective: July 1, 2015.

Steele

January 6, 2015, read first time and referred to Committee on Judiciary.



First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 57

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 30-5-6-4.1 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2015]: **Sec. 4.1. (a) An attorney in fact is entitled to judicial**
4 **review and settlement of an account of all transactions entered into**
5 **by the attorney in fact, whether or not:**
6 **(1) the attorney in fact's authority under the power of**
7 **attorney has been revoked; or**
8 **(2) a request for an accounting is made under section 4(c) of**
9 **this chapter.**
10 **(b) Judicial review and settlement of an account is initiated**
11 **upon the filing of a petition to settle and allow an account. The**
12 **petition must be filed with the court exercising probate jurisdiction**
13 **for the county in which the principal resides. Except as otherwise**
14 **provided by this section, the procedures under IC 30-4-5-14(b),**
15 **IC 30-4-5-14(c), IC 30-4-5-14(d), and IC 30-4-5-15 applicable to**
16 **judicial settlement of a trustee's account govern:**



- 1 (1) the filing of objections; and
- 2 (2) all proceedings;
- 3 on the petition.
- 4 (c) A petition to settle and allow an account must be served upon
- 5 all the following that are applicable:
- 6 (1) The principal.
- 7 (2) Any guardian appointed for the principal.
- 8 (3) Any successor attorney in fact.
- 9 (4) If the principal is deceased and a personal representative
- 10 has been appointed:
- 11 (A) the personal representative;
- 12 (B) any other fiduciary of the principal, if applicable; and
- 13 (C) any person beneficially interested in the decedent's
- 14 estate.
- 15 (5) If the principal is deceased and a personal representative
- 16 has not been appointed, the principal's heirs at law.
- 17 (6) If the principal is deceased and the principal's will is
- 18 probated without administration:
- 19 (A) the personal representative named in the probated
- 20 will; and
- 21 (B) all persons or entities beneficially interested in the
- 22 probated will.
- 23 (7) Any other person that the court directs.
- 24 (d) An attorney in fact is discharged from liability as to the
- 25 transactions disclosed in the accounting if:
- 26 (1) the court reviews and approves the accounting; and
- 27 (2) notice of the court's approval of the accounting is provided
- 28 to:
- 29 (A) the principal, if the principal is not deceased; or
- 30 (B) the principal's representatives, whether or not the
- 31 principal is deceased.
- 32 (e) In the absence of fraud, misrepresentation, inadequate
- 33 disclosure, or failure to provide proper notice related to the power
- 34 of attorney transactions, the discharge from liability under
- 35 subsection (d) is lawful and binding upon all interested persons:
- 36 (1) who would assert an interest on behalf of or through the
- 37 principal;
- 38 (2) who are:
- 39 (A) born or unborn;
- 40 (B) notified or not notified; or
- 41 (C) represented or not represented.
- 42 SECTION 2. IC 30-5-6-4.2 IS ADDED TO THE INDIANA CODE



AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2015]: **Sec. 4.2. (a) This section applies to a claim against an attorney in fact by:**

- (1) the principal;**
- (2) the principal's guardian;**
- (3) the principal's personal representative; or**
- (4) any person claiming through the principal following death.**

(b) Except as provided in subsection (c), any claim against an attorney in fact that has not previously been barred by adjudication under section 4.1 of this chapter, by consent or by limitation, is barred against any person described in subsection (a) who:

- (1) receives an accounting of all transactions entered into by the attorney in fact:**
 - (A) personally, if the person is an adult; or**
 - (B) through receipt by a parent or guardian, if the person is a minor or person with a disability; and**
- (2) does not commence a proceeding under IC 30-5-9-11 not later than two (2) years after receiving the accounting;**

as to the matters disclosed in the accounting.

(c) The rights to recover from an attorney in fact for fraud, misrepresentation, or inadequate disclosure related to a power of attorney accounting are not barred under this section.

SECTION 3. IC 30-5-6-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4.5. (a) An attorney in fact has the authority to employ persons, including:

- (1) attorneys;**
- (2) accountants;**
- (3) investment advisers; and**
- (4) agents;**

to assist the attorney in fact in the performance of the attorney in fact's fiduciary duties. Any reasonable costs incurred with regard to services rendered for the benefit of the principal shall be paid from the principal's asset holdings.

(b) Except as provided in subsection (c), if an accounting is requested as set forth in section 4 of this chapter, or a petition to settle and allow an account is filed under section 4.1 of this chapter, costs incurred by the attorney in fact:

- (1) to defend the actions of the attorney in fact on behalf of the principal with regard to the preparation of the accounting; and**
- (2) to defend any other actions of the attorney in fact on behalf of the principal;**



1 shall be paid from the principal's asset holdings.
2 (c) If a court determines that an attorney in fact:
3 (1) breached the attorney in fact's fiduciary duty or obligation to
4 the principal; or
5 (2) was engaged in self-dealing activities with the principal's asset
6 holdings;
7 the court may determine that the attorney in fact is responsible for the
8 payment of the costs incurred under subsection (b).

